

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS

DIVISION 1: BUSINESS LICENSES AND REGULATIONS

Chapter 20: MASSAGE TECHNICIANS

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41.201 Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations, shall have the meanings set forth herein. Words used in the present tense includes the future tense, plural words include the singular, and singular words include the plural. Words not specifically defined shall be given their common and ordinary meanings. The word "shall" as used herein is mandatory and not merely directory.

- (a) "Board of Supervisors" shall refer to the Board of Supervisors of San Bernardino County.
- (b) "Clerk" shall refer to the Clerk of the Board of Supervisors of San Bernardino County.
- (c) "County" shall mean the County of San Bernardino.
- (d) "Health Officer" shall refer to the County of San Bernardino Health Officer, or any person duly authorized to act on his behalf.
- (e) "Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice.
- (f) "Massage Clinic" means and includes any massage clinic, parlor, or any room, place or institution where massage is given or administered by a massage technician.
- (g) "Massage Technician" means and includes any person who gives, performs or administers to another person a massage as defined in this section.
- (h) "Notice Address" shall be the address designated by the licensee for the mailing of all notices, legal mail, and other written communications from the County to the licensee.
- (i) "Person" means and includes person(s), firms, corporations, partnerships, associations or other forms of business organization or group.
- (j) "Sheriff" shall refer to the Sheriff of the County of San Bernardino and/or his or her deputies.
- (k) "Recognized School" means any school or institution of learning which teaches the theory, ethics, practice, profession, and work of massage, which school or institution has been approved pursuant to California Education Code section 94300 et seq., and applicable regulations. A school offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.
- (l) "Specified Anatomical Areas" shall include any of the following human anatomical areas: genitals, pubic regions, anuses or female breasts below a point immediately above the top of the areolae.
- (m) "Specified Sexual Activities" shall include all the following:
 - (1) The fondling or other erotic touching of specified anatomical areas;
 - (2) Sex acts, normal or perverted, including intercourse, oral copulation, or sodomy;
 - (3) Masturbation; or
 - (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3),above.

(n) "Customer" shall include all clients, customers, patrons, guests, and any other person who receives a massage, within an establishment licensed as a massage clinic under Section 41.192 of the San Bernardino County Code.

Adopted Ordinance 3484 (1992); Amended Ordinance 3518 (1992); Amended Ordinance 3556 (1993); Amended Ordinance 3908 (2004);

41.202 License Requirements.

It shall be unlawful for any person to practice, engage in, or carry on the business or activities of a massage technician within the unincorporated area of the County without having a license under this chapter to do so, or without being employed and working at a massage clinic holding a valid license issued pursuant to Chapter 19 of Division 1 of Title 4 of the San Bernardino County Code (commencing at Section 41.191), or without complying with all regulations and requirements as hereinafter contained and set forth. A license to perform services as a massage technician does not authorize the operation of a massage clinic.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992);

41.203 License Exemptions.

This chapter shall not apply to the following classes of individuals, and no massage technician license shall be required of such persons, while engaged in the performance of the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the State of California, and persons working at the place of business under the supervision of a licensed physician, surgeon, chiropractor, osteopath, or physical therapist.
- (b) Nurses who are registered as such under the laws of the State of California.
- (c) Barbers, beauticians and cosmetologists who are duly licensed under the laws of the State of California, in accordance with the limitations of their licenses.
- (d) Athletic trainers.
- (e) Acupuncturists who are duly certified to practice their profession in the State of California.

Adopted Ordinance #3484 (1992); Amended Ordinance #3556 (1993);

41.204 Application Form and Content.

(a) Required Information. Any person desiring to obtain a massage technician license or renew an existing massage technician license shall make a written application to the Clerk of the Board on a written form to be provided by the Clerk of the Board, who shall promptly refer all complete applications to the Sheriff for investigation. Said application shall include, but not necessarily be limited to the following items:

- (1) Name. The applicant's full name and any aliases heretofore used or currently used and current mailing address and residence address.
- (2) Addresses. All previous residential addresses of the applicant within the five (5) years immediately preceding submission of the application.
- (3) Physical Description. Height, weight, color of eyes and hair of applicant and four (4) current color photographs at least two inches by two inches (2" x 2") in size.
- (4) Proof of Age. A certified birth certificate, immigration papers, passport, or current California Driver's License evidencing the fact the applicant is no less than eighteen (18) years of age.
- (5) Prior Licenses. A statement of licensee's prior experience in performing massage or any procedure described in Section 41.201(e), including a statement of whether such person has had an application for a massage technician or massage clinic license denied, or has had a massage technician or massage clinic license, and whether any such license has been revoked or suspended, the reason therefore, and a statement setting forth all massage business history or occupation.
- (6) Criminal Convictions. A statement of whether the applicant has been convicted of an offense involving conduct which requires registration under the California Penal Code section 290, or conduct which is in violation of the provisions of California Penal code sections 266i, 315, 316, 318 or 647(b), or any felony involving the sale of a controlled substance specified in Sections 11054 through 11058 of the California Health and Safety Code, or has been convicted in another state of an offense, which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in this section, or was convicted of one or more other offenses as may be described under Government Code section 51032.
- (7) Diploma. A diploma or certificate of graduation from a recognized school, together with a certified transcript or record establishing that the applicant attended a resident course of study of no less than two hundred (200) hours in theory, ethics, practice and profession and work of massage, and setting forth the beginning and ending date of the applicant's course of study. In lieu of the above, the applicant may: (a) submit a certificate from a recognized school in the State of California stating the applicant has completed a resident course of study in massage in another state and has passed the examination required of a graduate from the recognized school in the

State of California; or (b) the Clerk of the Board shall waive this requirement upon the applicant's passage of both written and practical tests as required under Section 41.207.

(8) **Notice Address.** The address to which all notices and communications from the County to the applicant or licensee shall be directed. It shall be the responsibility of the applicant or licensee to immediately inform the Clerk of the Board, in writing, of any changes of the applicant's or licensee's notice address.

(b) **Application Fee.** Each application for massage technician license shall be accompanied by nonrefundable investigative fee as specified in Chapter 2 of Division 6 of Title 1 relating to fees.

(c) **Incomplete Applications.** The Clerk of the Board shall promptly reject any incomplete application which does not meet all requirements of this section, and upon request of the applicant, shall notify the applicant in writing, by first-class mail, postage prepaid, to the address supplied to the clerk by the applicant, of the deficiencies in the application.

(d) **Filing for Renewal.** No application for renewal of the license shall be accepted earlier than ninety (90) days prior to expiration of the license.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992);

41.205 Investigation by Sheriff.

(a) **Review of Application.** The Sheriff shall conduct a reasonable investigation of the matters set forth in the application. The Sheriff shall review the information submitted to the Clerk of the Board and shall review any other documents or materials which are requested by the Sheriff in the course of investigation and which reasonably relate to the licensing requirements of this chapter. The Sheriff shall require the applicant to be fingerprinted and to pay whatever fingerprinting fee is then in effect.

(b) **Report on investigation Results.** The Sheriff shall promptly report to the Clerk of the Board whether the application and the other documents and materials submitted by the applicant meet all requirements of this chapter and all other applicable laws.

Adopted Ordinance #3484 (1992);

41.206 Physical Examinations.

All applicants for new massage technician licenses and renewals of existing massage technician licenses, within thirty (30) days following the submission of an application, shall obtain a statement from the County Health Officer stating that the applicant within the thirty (30) days immediately prior thereto, has been examined by the Department of Public Health and found to be free of infectious or communicable disease as determined by the County Health Officer. Such examination shall include those medical tests reasonably related to the license sought, and required by the Health Officer. The Health Officer shall require payment of a fee consistent with the fee schedule for the Department of Public Health to cover the cost of the examination, laboratory services, and counseling.

Adopted Ordinance #3484 (1992);

41.207 Massage Examination.

All applicants for a new massage technician license and renewals of expired licenses shall comply with the following requirements. These requirements do not apply if application for renewal is made prior to the license's expiration date:

(a) **Notification of Examination Date.** If the Sheriff reports to the Clerk of the Board that a massage technician application and accompanying documents meet the requirements of this chapter and all other applicable laws, the Clerk of the Board shall notify the applicant of the next regularly scheduled massage examination date, and the time and place such examination is to be held. The Clerk of the Board will additionally schedule the applicant to take the massage examination on the next regularly scheduled testing date.

(b) **Preparation of Examinations.** The Health Officer shall prepare and submit to the Clerk of the Board an examination to be administered to all massage technician applicants. Said examination shall consist of two parts. The first part of the examination shall consist of a written test of the applicant's knowledge of the theory, ethics, and practice of massage relative to aspects of human anatomy, and requirements of the County's Massage Technicians Chapter of the County Code. The second half of the examination shall consist of a practical demonstration of the applicant's ability to administer or perform massage, to be administered before an individual selected by the Health Officer, such person possessing such credentials and being knowledgeable of the theory, ethics, practice, profession, and work of massage and capable of impartially assessing the applicant's practical ability to administer or perform massage. Standards for assessing an applicant's abilities to administer or perform massage, knowledge and professional ethics, shall be based upon accepted standards of the American Massage Therapy Association and/or the Associated Professional Massage Therapists and Allied Health Practitioners. Each applicant will be considered to have passed the massage examination by answering seventy percent (70%) of the written examination questions correctly, and by successfully demonstrating each of the techniques required in the practical examination.

(c) Scheduling of Examinations. The Clerk of the Board shall schedule a massage examination to be held no less frequently than once every January, April, July and October. Results of massage examinations shall be made available to applicants within fourteen (14) days following the date upon which the examination is concluded.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992);

41.208 License Fee.

Every person practicing, engaging in or carrying on the activities or business of a massage technician shall procure a license and pay a license fee as specified in Chapter 2 of Division 6 of Title 1 relating to fees in addition to all other fees required under this chapter.

Adopted Ordinance #3484 (1992);

41.209 Grounds for Denial of License.

A massage technician license shall be denied upon the determination of any one of the following:

(a) Prior Criminal Convictions. The applicant, has within ten (10) years immediately preceding the date of the application been convicted of any of the offenses set forth in Section 41.204(a)(6) or has, within the same time frame been convicted of any offense in another state which, if committed or attempted in this State, would have been punishable as one or more offenses enumerated under this section, or is required to register under Section 290 of the Penal Code.

(b) Revocation of Prior Licenses. The applicant has had a massage clinic license or massage technician license revoked for cause within the five (5) year period immediately preceding the date of the application.

(c) Misstated Facts. The applicant has knowingly misstated facts or falsified information on the application.

(d) Inadequate Application. The application has failed to comply with the requirements of Section 41.204.

(e) Failure to Pass Tests. The applicant has failed either the physical examination required pursuant to Section 41.206 or the massage examination required pursuant to Section 41.207.

(f) Operating Without a License. The applicant has conducted, within the five (5) years immediately preceding the application, a business requiring a massage clinic or massage technician license in the unincorporated portion of the County without such a license having been issued by the County.

(g) Prohibited Conduct. An applicant has been found to have engaged in prohibited conduct in violation of Subsection 41.1917(a) and/or 41.2014(a).

Adopted Ordinance #3484 (1992); Amended Ordinance #3556 (1993);

41.2010 License Denial.

Any person denied a license pursuant to this chapter may not perform the acts requiring a license under this chapter. An applicant whose license has been denied may appeal the denial to the Board of Supervisors as set forth in Section 41.2018 of this chapter.

Adopted Ordinance #3484 (1992);

41.2011 Licenses Non-Transferable.

All licenses issued under this chapter are non-transferable.

Adopted Ordinance #3484 (1992);

41.2012 Display of License.

Any person to whom a massage technician license is granted shall display said license prominently in a conspicuous place, capable of being viewed by customers, at every location where the licensed activities are performed or conducted.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992); Amended Ordinance #3556 (1993);

41.2013 Duration and Renewal of License.

(a) Term. Each license issued under this chapter shall terminate at the expiration of one (1) year from the date of its issuance unless revoked prior to said termination pursuant to Section 41.2015.

(b) Any renewal of a license issued under this chapter shall be pursuant to the same requirements, procedures, provisions and regulations set forth in Sections 41.204, 41.205, 41.206, and 41.207 (if applicable) of this chapter.

(c) Renewal During Pendency of License Revocation Proceedings. In the event a renewal application is filed during the pendency of a proceeding to revoke the license, the license shall continue in full force and effect until entry of the final order of the Board terminating revocation proceedings. The application for renewal shall become a part of

the pending proceeding, and be subject to all evidence which has been or may thereafter be presented. Failure of the Board to revoke the license shall have the effect of granting renewal of the license. No further notice to the applicant is required, and the Board, or Hearing Officer is authorized to consider and make findings upon such application in accordance with this chapter.

Adopted Ordinance #3484 (1992); Amended Ordinance #3603 (1995);

41.2014 Prohibited Conduct.

(a) Prohibited Conduct. No massage technician or that technician's customers, patrons, or guests may engage in any specified sexual activity upon the premises of the massage clinic. No massage technician may expose specified anatomical areas in the presence of any patron, customer, or guest. In the course of administering a massage, no massage technician may make intentional physical contact with specified anatomical areas of any customer, patron, or guest. Notwithstanding Section 11.021 of this code, violation of this section shall not constitute a misdemeanor or an infraction, but such violation shall be grounds for revocation of a massage technician license.

(b) Draping. No massage technician may administer any form of massage or come into any form of physical contact with a customer who is either fully or partially undressed, without first draping the customer's specified anatomical areas, if such areas would otherwise be exposed, in accordance with the accepted standards of the American Massage Therapy Association and/or Associated Professional Massage Therapists and Allied Health Practitioners.

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992);

41.2015 Revocation of License.

(a) Grounds for Revocation. A license issued under this chapter shall be revoked on one or more of the following grounds:

(1) Fraud or Deceit. That the licensee practiced fraud or deceit in obtaining a license under this chapter.

(2) Violation of Chapter. That the licensee violated a provision or provisions of this chapter.

(3) Criminal Conviction. That the licensee has been convicted in a court of competent jurisdiction of any offenses described in Section 41.204(a)(6).

(4) Employment at Unlicensed Clinic. That the licensee has knowingly been employed, allowed or permitted to perform massage at an unlicensed massage clinic.

(5) Error. That the license was issued in error.

(6) Civil Penalties. That the licensee has been assessed with three (3) or more civil penalties during any six (6) month period.

(7) Prohibited Conduct. A licensee has been found to have engaged in prohibited conduct in violation of Section 41.2014(a).

(b) Notice of Revocation. Upon determination of grounds to revoke a license, the Clerk of the Board shall cause a "Notice of Revocation" to be mailed by first class, postage prepaid mail, to the Notice Address designated by the licensee pursuant to Section 41.204(a)(8).

Adopted Ordinance #3484 (1992); Amended Ordinance #3518 (1992);

41.2016 Validity.

If any section or subsection, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this chapter.

Adopted Ordinance #3484 (1992);

41.2017 Civil Penalties.

For each violation of the provisions of this chapter, excepting violation of Section 41.2014 pertaining to prohibited conduct, a monetary civil penalty of Five Hundred Dollars (\$500) per violation may be assessed in lieu of license revocation.

Adopted Ordinance #3484 (1992);

41.2018 Appeal Rights.

Any person denied a license under this chapter or licensee whose license has been revoked may appeal in writing to the Board of Supervisors. Said appeal must be in writing and must be filed with the Clerk of the Board not more than fifteen (15) days following the Clerk of the Board's deposit into the mails of the Notice of Denial or Revocation addressed to the licensee at the address identified by the applicant or licensee as the address to which

all notices are to be mailed. The Board of Supervisors may hear appeals directly or in its sole discretion, may appoint a hearing officer to hear any appeal and make a recommendation to the Board of Supervisors pursuant to Section 12.270, et seq., of the County Code. All decisions of the Board of *Supervisors* shall be final as to any appeal presented to them.

Adopted Ordinance #3484 (1992);